

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 646 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA   sd/-  
and  
Hon'ble MR.JUSTICE H.K.RATHOD       sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge?No :

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DENA BANK

Versus

FQUJEE FASTENERS NUTS & BOLTS INDUSTRIES  
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Appearance:

Ms. PJ DAWAWALA for MR KN RAVAL for Petitioner  
MR DD VYAS for Respondent No. 1, 2, 3, 4  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA  
and  
MR.JUSTICE H.K.RATHOD

Date of decision: 15/02/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava,J.)

1. The Judgment and Decree dated 30.10.1985 of Civil Judge (S.D.), Navsari is under challenge by the plaintiff - appellant in this Appeal.

2. Brief facts are that the plaintiff bank filed Suit against the defendants to recover sum of Rs.6,47,567/- together with cost and interest. On the request of defendants No.2 to 4 the defendant No.1 was granted loan facilities for expansion of industries to the tune of Rs.3 lacs and necessary hypothecation documents were executed by the defendants in favour of the plaintiff bank. The loan was granted on 29.10.1982. Besides the above loan Rs.3 lacs were granted as term loan against hypothecation of plant and machinery. In spite of promise to pay the defendants failed to repay the loan. Notices were served on them, but they did not repay the loan hence the suit was filed.

3. The defendants did not contest the Suit. They had admitted the Suit claim in toto but they requested that they were not in a position to pay the amount claimed in the Suit at one time and explaining their hard financial position they prayed for instalments so as to enable them to pay the decretal amount.

4. The trial Court considered the evidence of the defendants on stressed financial position and decreed the suit for the entire amount and granted facility to the defendants to pay the decretal amount, cost, etc. in quarterly instalments of Rs.15,000/-. The first instalment was payable on 15.12.1985. Subsequent quarterly instalments were also likewise made payable. The default clause was to the effect that if the defendants failed to pay any one of the instalments the plaintiff shall be at liberty to recover the balance amount from the defendants in lumpsum and also by sale of hypothecated goods, plant, machinery, etc.

5. Ms. P.J.Dawawala, appeared for the appellant and wanted time to seek instructions from the appellant whether the instalments have been paid by the respondents or not. We are not inclined to grant any adjournment in this old Appeal of 1985 for the obvious reason that in view of the default clause contained in the operative portion of the Judgment the plaintiff appellant is at liberty to proceed to realise the balance forthwith by moving execution Application in the Court below.

6. The only question for consideration is whether the trial Court committed any error in granting facility

of instalments to the respondents for paying the decretal amount. The trial Court in its judgment has mentioned that one Devendrabhai Patel was examined as witness of the defendants. He stated that he had no means except the business which the defendants were carrying on in the name of the defendants No.1 and that they have invested Rs.4,84,000/- in the said partnership business. He further stated that if the entire decretal amount is ordered to be paid in lumpsum the said business of the partnership will be closed and there will not remain any possibility of realising the decretal amount from the defendants. He also stated that the defendants can pay monthly instalments of Rs.3000/- to Rs.5000/-. This statement was not controverted from the side of the plaintiff appellant, hence it was accepted by the Court below. Considering the maximum offer of Rs.5000/- per month the Court below fixed the instalment of Rs.15,000/per quarter. In our view, looking to the facts and circumstances of the case and the evidence adduced by the defendants regarding their tight financial position the trial Court committed no error in granting facility of instalment to the defendants to pay the decretal amount.

7. No other point was pressed by the learned counsel for the appellant. We see no reason to interfere with the findings given by the trial Court. The Appeal is therefore dismissed with no order as to costs.

sd/-

( D. C. Srivastava, J. )

Date : February 15, 2000 sd/-

( H. K. Rathod, J. )

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